



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900–AO59

Copayment for Extended Care Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document promulgates Department of Veterans Affairs (VA) final regulations amending the definition of “spousal resource protection amount” to reference the Maximum Community Spouse Resource Standard, which is adjusted and published each year by the Centers for Medicare and Medicaid Services (CMS). This change has the immediate effect of increasing the spousal resource protection amount from \$89,280 to \$115,920, and ensures that the spousal resource protection amount will stay consistent with the comparable protection for the spouses of Medicaid recipients.

DATES: Effective Date: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director Business Policy, Chief Business Office, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 461-1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 22, 2013, VA published in the Federal Register (78 FR 23702) a proposal to amend the definition of "spousal resource protection amount" found at 38 CFR 17.111(d)(2)(vi). The spousal resource protection amount is the amount of liquid assets of a veteran and community (i.e., not institutionalized) spouse that is considered unavailable when calculating the veteran's maximum monthly copayment obligation for extended care services longer than 180 days. We proposed to define the "spousal resource protection amount" by reference to the Maximum Community Spouse Resource Standard, which is published each year by the Centers for Medicare and Medicaid Services (CMS) and is adjusted annually based on the Consumer Price Index. Previously, the spousal resource protection amount used by VA was set at \$89,280 and did not adjust annually. Under the proposed change, this amount would immediately increase to the current CMS standard of \$115,920, and would automatically adjust on an annual basis consistent with the comparable protection for the spouses of Medicaid recipients.

In addition, we proposed to remove § 17.111(g), which consists entirely of a copy of VA Form 10-10EC, Application for Extended Care Services.

Interested persons were invited to submit comments to the proposed rule on or before June 21, 2013. We received one comment advocating for increased funding for medical services provided to military spouses, which is beyond the scope of this rulemaking. We received no substantive comments addressing the substance of the proposed rule or suggesting any changes. Therefore, based on

the rationale set forth in the proposed rule, VA is adopting the provisions of the proposed rule as a final rule with no changes.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis

can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published."

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on November 21, 2013, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: November 22, 2013

Robert C. McFetridge
Director, Regulation Policy and Management
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as set forth below:

PART 17 -- MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

2. Amend § 17.111 by:

- a. Revising paragraph (d)(2)(vi).
- b. Removing paragraph (g).

The revision reads as follows:

§ 17.111 Copayments for extended care services.

* * * * *

(d) * * *

(2) * * *

(vi) Spousal resource protection amount means the value of liquid assets equal to the Maximum Community Spouse Resource Standard published by the Centers for Medicare and Medicaid Services (CMS) as of January 1 of the current calendar year if the spouse is residing in the community (not institutionalized).

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[FR Doc. 2013-28436 Filed 11/26/2013 at 8:45 am; Publication Date:
11/27/2013]